

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 7: Village of Chama

Subfile No. CHCV-004-0003

MOTION TO VACATE CONSENT ORDER FILED DECEMBER 12, 2003

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and moves the Court to vacate the Consent Order filed December 12, 2003 (Doc. No. 7336) in connection with defendants Fred Hiler and John Hiler and subfile CHCV-004-0003, and as grounds therefore Plaintiff states as follows:

1. Since the time Fred Hiler and John Hiler (“Hilers”) signed and approved the Consent Order filed December 12, 2003 in subfile CHCV-004-0003, the adjacent landowner, Melvin E. Kurth, Jr., has notified the State that he (Mr. Kurth) is the owner of the land and irrigation water rights described in subfile CHCV-004-0003. Mr. Kurth has provided the State with a plat of survey showing that he is the owner of these lands, and that the land owned by the Hilers is in another location. Information available to the State from the county at the time of the original hydrographic survey was limited, and the exact location of the Hiler property was somewhat doubtful at the time the proposed Consent Order in subfile CHCV-004-0003 was sent to the Hilers.

2. In April 2005, the State wrote to the Hilers in Mountain Home, Idaho, sending them

a copy of the plat of survey described above, and explaining the information on ownership received from Mr. Kurth. The State indicated to the Hilers that it intended to file a motion to set aside the Consent Order filed December 12, 2003, and requested that the Hilers contact counsel for the State if they had any objection. To date, the Hilers have not contacted the State concerning this matter.

3. The State believes that the Consent Order filed December 12, 2003 should be vacated.

4. Counsel for Mr. Kurth, John S. Catron, supports the granting of this motion.

WHEREFORE, the Plaintiff State of New Mexico requests that the Court vacate the Consent Order filed December 12, 2003 (Doc. No. 7336) in connection with defendants Fred Hiler and John Hiler and subfile CHCV-004-0003.

Respectfully submitted,

/electronic signature/
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion to Vacate Consent Order Filed December 12, 2003, was mailed to following persons on September 6, 2005.

/electronic signature/

Edward G. Newville

Special Master Vickie L. Gabin
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